STATE OF MICHIGAN

COURT OF APPEALS

BOARD OF MEDICINE, Petitioner-Appellee,	UNPUBLISHED July 25, 2000
v	No. 212649 Board of Medicine
HAITHAM MASRI, M.D., Respondent-Appellant.	LC No. 96-000339

Before: Jansen, P.J., and Hood and Wilder, JJ.

PER CURIAM.

Respondent-appellant Dr. Haitham Masri (Dr. Masri) appeals as of right from an administrative order issued by petitioner-appellee Michigan Board of Medicine Disciplinary Subcommittee (the Board) imposing a three-month suspension of Dr. Masri's license to practice medicine, followed by a one-year term of probation, continuing education requirements, and a $5,000 fine. We affirm.

The Board filed a three-count administrative complaint against Dr. Masri, alleging violations of §§ 16221(a), (b)(i), and (b)(iv) of the Public Health Code (PHC),[1] arising out of plaintiff's treatment of patient Jimmy Ladd from July through August, 1992. The complaint alleged that Dr. Masri's medical treatment of Ladd was negligent, incompetent, and in violation of the requisite standard of care. The complaint further alleged that, in an effort to conceal his substandard care, Dr. Masri unlawfully directed a member of his staff to alter a surgical consent form after Ladd's complications had occurred, and unlawfully altered Ladd's medical chart to add an August 14, 1992 office visit that did not occur, demonstrating a lack of good moral character.

At the conclusion of an administrative hearing, the Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) finding that the Board failed to establish by a preponderance of the evidence that Dr. Masri was negligent or breached the standard of care in the medical treatment afforded Ladd. Specifically, the ALJ found a lack of evidence establishing that Dr. Masri's medical care was improper or not in conformity with the requisite standard of care. However, the ALJ found that grounds for disciplinary action nonetheless existed on the basis that Dr. Masri directed a member of his staff to add complications to the surgical consent form after Ladd had signed it and after the surgery had been performed, and because Dr. Masri altered Ladd's medical chart to reflect an August 14,

1992 office visit that did not occur. Based on these findings, the ALJ concluded that the Board established by a preponderance of the evidence that Dr. Masri violated §§ 16221(a), (b)(i), and (b)(iv) of the PHC. The Board subsequently issued a final order affirming the ALJ's proposed findings of fact and conclusions of law and imposing a three-month suspension of Dr. Masri's license to practice medicine, followed by a one-year term of probation, continuing education requirements, and a $5,000 fine.

Dr. Masri argues that the factual findings and legal conclusions set forth in the Board's final order are not supported by competent, material and substantial evidence on the whole record and, therefore, the ruling should be reversed. We disagree.

Judicial review of an administrative agency's decision is limited to determining whether the decision is authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306(1); MSA 3.560(206)(1); *Adrian School Dist v Michigan Public School Employees' Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998); *O'Connor v Comm'r of Ins*, 236 Mich App 665, 670; 601 NW2d 168 (1999). "Substantial evidence" is "evidence that a reasonable person would accept as sufficient to support a conclusion." *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998); *Black v DSS*, 212 Mich App 203, 207; 537 NW2d 456 (1995). While this requires more than a scintilla of evidence, it may be substantially less than a preponderance of the evidence. *Dowerk, supra* at 72. However, a court may set aside an agency decision that is supported by substantial evidence if it is based on a substantial and material error of law. MCL 24.306(1)(f); MSA 3.560(206)(1)(f); *O'Connor, supra* at 670.

A reviewing court must give due deference to the agency's regulatory expertise and may not "invade the province of exclusive administrative fact finding by displacing an agency's choice between two reasonably differing views." *Davenport v City of Gross Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405-406; 534 NW2d 143 (1995). Thus, a reviewing court may not set aside factual findings supported by the evidence merely because alternate findings could also have been supported by evidence on the record or because the court might have reached a different result. *Black, supra* at 206. Where the administrative findings of fact and conclusions of law are based primarily on credibility determinations, such findings will generally not be disturbed because it is not the function of the reviewing court to assess witnesses' credibility or resolve conflicts in the evidence. *Hitchingham v Washtenaw Co Drain Comm'r*, 179 Mich App 154, 159; 445 NW2d 487 (1989) citing *Battjes Builders v Kent Co Drain Comm'r*, 15 Mich App 618, 623-624; 167 NW2d 123 (1969); *Reed v Hurley Medical Center*, 153 Mich App 71, 76; 395 NW2d 12 (1985).

Dr. Masri first argues that the Board's finding that Dr. Masri unlawfully directed his employee to alter Ladd's surgical consent form to add complications after the surgical procedure occurred was not supported by the evidence. Dr. Masri claims that the Board relied on unsupported inferences and mere speculation in reaching its conclusion.

The uncontroverted evidence and testimony introduced at the hearing was that (1) Dr. Masri was concerned about possible complications after Ladd's surgery, (2) Dr. Masri contacted his medical

assistant, Samantha Buescher, at home the evening after Ladd's surgery and asked her to check the patient consent forms at Chelsea Community Hospital to make sure that all the complications were listed, (3) Dr. Masri did not reveal Ladd's name to Buescher or that Ladd's surgery had already been performed, (4) Dr. Masri did not inquire of Buescher's findings after she reviewed the consent form and returned to the office, (5) Buescher added the words "air leakage to brain" to the complications on Ladd's consent form after his surgery, (6) the additional complications noted on the consent form ("saddle nose, difficulty breathing, CSF leak") were added *after* the surgery was performed and were in Buescher's handwriting, (7) a page containing Ladd's name and information relating to him was missing from Ladd's chart at Chelsea Community Hospital, (8) Dr. Masri settled the underlying malpractice case filed against him by the Ladds after a handwriting expert was retained to identify the writing on the consent form and determine when it was recorded, and (9) Dr. Masri offered the Ladds an additional $5,000 in settlement money if they would agree to drop the alteration claim.

In addition to the foregoing unrefuted evidence, Dr. Masri's own account of the use of surgical consent forms in his office is noteworthy. Dr. Masri testified on the one hand that he was not involved with the surgical consent forms and that his office staff was responsible for completing the forms and having the patients sign them. He later testified that he was intimately familiar with the consent forms and considered them extremely important because of the significant role they played in advising patients of the potential complications with surgeries. It is reasonable to infer from all of this evidence, including Dr. Masri's inconsistent testimony on this issue, that he was concerned that he neglected to accurately complete the surgical consent form and directed Buescher to add the words and conceal the omission.

Further, Buescher testified that on the evening after Ladd's surgery, Dr. Masri called her at home and instructed her to go to Chelsea Hospital the next morning to review all of his patients' consent forms to make sure they were properly completed. Although Buescher claimed that Dr. Masri did not instruct her to review any particular patient's form, ironically, Ladd's was the only form found to be missing complications. In addition, Buescher testified that although Dr. Masri did not specifically instruct her to add complications to the patients' forms, that is precisely what she believed he intended for her to do. Finally, Buescher testified that she did not discuss her findings or inform Dr. Masri that she added complications to Ladd's consent form when she returned to the office. However, in light of Dr. Masri's concerns of potential complications with Ladd's surgery and his specific request for Buescher to review the consent forms to ensure that all complications had been listed, the trial court reasonably concluded that it was highly unlikely that Dr. Masri did not inquire of Buescher's findings concerning the consent forms upon her return from the hospital and did not know of the alterations made to Ladd's form.

Viewing the record as a whole, we find more than ample support for the Board's finding that Dr. Masri unlawfully directed Buescher to alter Ladd's consent form after his surgery was performed. Indeed, the Board's inferences and reasonable conclusions drawn from the evidence were entirely appropriate. We find that there was competent, material and substantial documentary and testimonial evidence, well beyond mere conjecture, speculation and unreasonable inferences, to support the Board's finding.

Dr. Masri also argues that the Board's finding that he unlawfully altered Ladd's medical chart to reflect an August 14, 1992 office visit that did not occur was not supported by substantial evidence on the whole record. We disagree.

At the hearing, the parties did not dispute that Buescher typed the August 14, 1992 entry into Ladd's medical chart based on Dr. Masri's dictation. Rather, the disputed factual issue was whether the office visit actually occurred or whether Dr. Masri manufactured the entry into Ladd's chart through dictation to conceal his failure to conduct a pre-surgery meeting with Ladd to review the consent form and potential surgical complications.

A review of the record reveals that none of the witnesses were able to corroborate Ladd's presence in Dr. Masri's office on August 14, 1992. Buescher, who typed the entry into Ladd's chart based on Dr. Masri's dictation, had no independent recollection of Ladd's presence in the office and testified that she was simply following instructions. Nor was there any indication in the chart itself noting when the entry was dictated or typed, or what transpired during the visit with Ladd, as is typical with medical records. In addition, Dr. Masri's billing records do not support his claim that Ladd visited the office on August 14. There was no bill generated for the visit and, even accepting Dr. Masri's explanation that no bill existed because there was no fee for the visit, all of the expert testimony introduced at trial established that physicians typically generate a bill or invoice (commonly referred to as a "super bill") documenting office visits whether a fee was charged or not. In fact, Dr. Masri admitted that he usually prepared a preoperative form or invoice reflecting office visits even when there was no fee charged; however, he could not produce such document in this case.

Finally, Ladd's wife, Joanne Ladd, testified that she maintained meticulous records of all of her husband's doctor's appointments and office visits in an appointment book, and kept all the appointment cards he received from the office. Indeed, Ladd corroborated this testimony, noting that his wife maintained detailed and accurate records of all his appointments and that, other than work-related activity, he rarely did anything that she did not know about or that was not recorded in her book. Joanne identified pages from her appointment book dated from July 13 to September 20, 1992, which indicated that Ladd had visited Dr. Masri's office on July 17 and July 31, 1992, and that he visited Chelsea Hospital on August 4 and August 17, 1992; however, there was neither a notation entered nor an appointment card reflecting an office visit on August 14, 1992. Joanne further testified that it was impossible for Ladd to have visited Dr. Masri's office on August 14 because she was using the family car that day and there was no other vehicle available for Ladd to drive.

While Dr. Masri challenges Joanne's testimony as unreliable, claiming that Ladd may have visited his office without his wife knowing, we find no evidence in the record to refute either Ladd's or Joanne's testimony that Joanne was always aware of Ladd's doctor appointments and that she diligently recorded each appointment in her book. In any event, this argument bears directly on the issue of credibility which was properly resolved by the trier of fact. *Hutchingham, supra* at 159; *Reed, supra* at 76. The Board's finding that Dr. Masri unlawfully altered Ladd's medical chart was based on reasonable inferences drawn from the evidence, and was supported by documentary and testimonial evidence at the hearing. Accordingly, we reject Dr. Masri's argument that the finding was unsupported by substantial evidence on the whole record.

Next, Dr. Masri challenges the Board's credibility determinations of the witnesses and the weight afforded the testimonial and documentary evidence. As noted above, credibility determinations are within the province of the fact finder and it is not the role of this Court to second-guess those findings or substitute its judgment for that of the agency. *Reed, supra* at 76. The sole function of this Court when reviewing administrative rulings is to determine whether the agency's decision is supported by substantial evidence on the whole record from which legitimate and supportable inferences were drawn. *O'Conner, supra*; *McBride v Pontiac School Dist (On Remand)*, 218 Mich App 113, 123; 553 NW2d 646 (1996). Indeed, resolving conflicting testimony and evidence is precisely the role of the fact finder. *Hitchingham, supra* at 159; *Reed, supra* at 76. After considering Dr. Masri's arguments in light of the testimony and evidence introduced presented at the hearing, we conclude that the Board's credibility findings, and particularly those relating to Dr. Masri and Buescher, were adequately supported by the record. Accordingly, we find no merit to this claim.

Finally, Dr. Masri argues that the Board's ruling and final order should be reversed because they violated the constitution, a statute, and were in excess of its statutory authority. Dr. Masri has failed to identify any specific constitutional or statutory provision that has been violated by the Board's decision. A litigant may not merely announce its position or assert an error and then leave it to this Court to discover and rationalize the basis for his claim, or search for authority to sustain or reject the claim. *Palo Group Foster Care, Inc v DSS*, 228 Mich App 140, 152; 577 NW2d 200 (1998). In any event, Dr. Masri does not challenge the Board's authority to sanction his license, and does not claim that the Board's factual findings, if upheld, do not support the legal conclusions reached. Nor does Dr. Masri challenge any of the legal precepts associated with a constitutional or statutory provision or articulate a particular violation by the Board. Rather, Dr. Masri simply reiterates his claim that the Board's findings are not supported by sufficient evidence on the record. This issue has already been addressed above, and we decline to review it anew.

Affirmed.

/s/ Kathleen Jansen
/s/ Harold Hood
/s/ Kurtis T. Wilder

[1] MCL 333.16221; MSA 14.15